

EXHIBIT 11

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3

4 IN RE PHARMACEUTICAL INDUSTRY

5 AVERAGE WHOLESALE PRICE

6 LITIGATION

7 _____ MDL No. 1456

8 THIS DOCUMENT RELATES CIVIL ACTION: 01-CV-12257-PBS

9 TO ALL CLASS ACTIONS. Judge Patti B. Saris

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12 DEPOSITION OF ROBERT A. HOWE

13 TAKEN ON BEHALF OF DEFENDANTS

14 NOVEMBER 16, 2005

15 - - -

16 BE IT REMEMBERED THAT, pursuant to the Federal Rules

17 of Civil Procedure, the deposition of ROBERT A. HOWE

18 was taken before Laurie A. Volker, Registered

19 Professional Reporter, on November 16, 2005,

20 commencing at the hour of 10:21 a.m., the proceedings

21 being reported at 66 East Sixth Avenue, Eugene,

22 Oregon.

1 Mr. Howe, do you receive any documents from
2 your supplemental insurance provider that would
3 explain the details of that coverage from them?

4 A. Yes, sir, I do.

5 Q. What kind of documents do you receive?

6 A. Similar to the Medicare documents.

7 Q. So you have a document that describes the
8 plan details?

9 MR. WILLIAMS: I'll object to that as
10 vague.

11 MR. PELAYO: I'll ask it again.

12 BY MR. PELAYO:

13 Q. Have you ever received a document from
14 United Health Care that describes the details of your
15 plan?

16 A. No.

17 Q. So you don't have such a document in your
18 possession at home?

19 A. Not from United Health Care.

20 Q. From whom do you have it?

21 A. From Wells Fargo.

22 Q. Okay. So you received a document from

1 Wells Fargo that relates to United Health Care?

2 A. Yes.

3 Q. Okay. And it describes the details of the
4 plan?

5 A. Yes.

6 Q. Okay. And you have that at home?

7 A. Yes.

8 Q. Okay.

9 Do you receive documents -- which I'll call
10 explanations of benefits, like the CMS documents that
11 we talked about earlier -- do you receive such
12 explanations of benefits with respect to United
13 Health Care?

14 A. Yes, I do.

15 Q. And do you have those at home?

16 A. Yes.

17 Q. And would those be in the same cabinet
18 where you keep the Medicare CMS documents?

19 A. I keep -- yes.

20 Q. Okay.

21 And would you say that you have

22 approximately the same level of recordkeeping for

1 United Health Care that you do for Medicare?

2 A. Yes.

3 Q. Okay. So -- and this is a compliment --
4 you've pretty much kept most of these records?

5 A. Yes.

6 Q. Okay.

7 Have you -- in connection with this
8 litigation, have you given any of these documents
9 we've just been describing with respect to United
10 Health Care to your lawyers?

11 A. I believe I have.

12 Q. Okay. And this is not a question for you,
13 this is just a statement for the record.

14 MR. PELAYO: Mr. Williams, we will request
15 formally that we receive all the documents relating
16 to Mr. Howe's supplemental insurance coverage which
17 he has testified he has in his possession and he has
18 given to counsel. We'd like those produced
19 immediately, and we've documented this request in
20 several letters to counsel.

21 We believe that these documents are urgent
22 to our ability to prepare for the upcoming class cert

1 submission as they bear directly upon his coinsurance
2 payment, and whether or not it's related to AWP.

3 MR. WILLIAMS: I'll note the request, and I
4 have no response other than we'll take it under
5 advisement.

6 As you know, this is a broader issue that
7 covers other deponents, other documents, and we're
8 not going to resolve it today, but you've stated your
9 request on the record, and I've noted it.

10 MR. PELAYO: Okay.

11 BY MR. PELAYO:

12 Q. Mr. Howe, did -- I think I know the answer
13 to my own question.

14 Your wife has been a home -- let me
15 withdraw it.

16 Your wife has not worked since at least
17 1990; correct?

18 A. Correct.

19 Q. So does she have any insurance coverage of
20 her own?

21 A. She has Medicare A and B.

22 Q. Okay. Does she have a supplemental

1 only producing checks relating to cancer treatments?

2 Let me strike that.

3 So is the only reason you've seen doctors
4 at Oregon Urology for your cancer treatment?

5 A. No.

6 Q. What else have you been seeing them for?

7 A. A bladder condition.

8 Q. Okay. Do you receive any medications for
9 that condition that are administered by a physician?

10 A. Just a prescription for a pill.

11 Q. A pill. Okay.

12 Mr. Howe -- and here I really am asking for
13 your help.

14 Let's just take, as an example, the
15 document that was marked as Exhibit Howe 002, the set
16 of documents, the explanations of benefits?

17 A. Yeah.

18 Q. Let's take the top one, which is marked
19 Howe 0014.

20 A. Correct.

21 Q. And there was a date of service on

22 December 2nd, 2003.

1 A. That's what it says.

2 Q. Can you look now at Exhibit Howe 003 which
3 I gave you, which are the set of cancelled checks,
4 and show me which check reflects your payment for
5 that service?

6 A. I cannot.

7 Q. That's fine. Have you produced the
8 cancelled check that would reflect your payment for
9 that service on December 2nd, 2003?

10 MR. WILLIAMS: Objection to form.

11 A. I don't know, because I don't get billed
12 from Oregon Urology Specialists with any specific
13 numbers that tie to this.

14 BY MR. PELAYO:

15 Q. I see. So when you think of your payments,
16 you think of what your payment looks like, your
17 invoice looks like, from Oregon Urology?

18 A. Correct.

19 Q. And do you have all of those invoices?
20 Have you kept those?

21 A. I believe I have.

22 Q. And have you provided -- have you given

1 those to your lawyers in connection with this
2 litigation?

3 A. I'm not sure.

4 Q. Okay.

5 MR. PELAYO: I'll just make a statement on
6 the record, Kent. These are invoices from his
7 medical provider that reflect billing for
8 physician-administered drugs, and we ask that you
9 provide those as soon as possible.

10 MR. WILLIAMS: Duly noted.

11 BY MR. PELAYO:

12 Q. So just going back to this -- and we won't
13 go through the chore of it, because I think I know
14 what your answer's going to be -- but is it safe to
15 say that to ask you to try to match up the cancelled
16 checks with these explanation of benefits, it would
17 not be possible for you because you don't think of
18 them in this way, you think of them in terms of the
19 invoices you receive from Oregon Urology?

20 A. Right. Correct.

21 Q. Okay. That's helpful.

22 I'm going to give you now a document that's

1 "Lupron Depot"?

2 A. Yes.

3 Q. But then going back down, it says, "June 3,
4 '03, Zolodex"?

5 A. Yes.

6 Q. So what I'm wondering is, earlier you
7 said that -- and it was based on your memory, the
8 first time you remember taking Zolodex was 2004.
9 Could it be that it was earlier? Could this be the
10 first time?

11 A. I think so, yes.

12 Q. Okay. All I'm asking is, does June 3rd,
13 2003, generally comport to when you took Zolodex?

14 A. According to this, it has to be.

15 Q. Okay. And I just want to make sure I
16 understand what you said about the switch to Zolodex.

17 Did you say it was recommended by your
18 doctor?

19 A. Yes.

20 Q. Which doctor was that?

21 A. Dr. Bergreen.

22 Q. Bergreen.

EXHIBIT 12

FILED UNDER SEAL

EXHIBIT 13

FILED UNDER SEAL

EXHIBIT 14

FILED UNDER SEAL

EXHIBIT 15

KLINE & SPECTER
A PROFESSIONAL CORPORATION



Nov 23 2005
2:54PM

Direct Fax: 215-735-0957
Respond to: Philadelphia Office

terrianne.benedetto@klinespecter.com

November 23, 2005

VIA LEXISNEXIS

Mark G. Young, Esquire
PATTERSON BELKNAP WEBB & TYLER
1133 Avenue of the Americas
New York, NY 10036-6710

Re: *In Re: Pharmaceutical Industry Average Wholesale Price Litigation*; MDL No. 1456

Dear Mr. Young:

As you know, David Clark passed away on November 5, 2005. His son, Roger Clark, is in the process of having an estate raised and is going to replace his father as the class representative on behalf of his father's estate. Please provide me with at least two dates in the coming two weeks on which you or another defense counsel are available to conduct the deposition of Roger Clark in Show Low, Arizona.

Very truly yours,

TERRIANNE BENEDETTO

TAB/jn

cc: All Counsel of Record (via LexisNexis)

EXHIBIT 16

From: Steve Berman [mailto:Steve@hbsslaw.com]
Sent: Monday, November 14, 2005 10:16 AM
To: Lynch, Mark
Subject: RE: Proposed Class Reps

1. We are making no representation that the class 3 representatives have "some nexus with Mass law". There is nothing in the pleading that suggests that and we identified the their residency in the complaint. If you read the complaint you can see that and if your reason for deposing these folks was to establish that you have wasted your clients money due to our own actions. We would have answered any questions regarding contacts with Massachusetts by letter or stipulation if that was the main objective of the deposition or the reason for its being taken.

2. Our listing of alternate individuals makes no representation that they are Medicare beneficiaries, and indeed the fact they are listed in class 3 makes it clear from the outset that we

were arguing they were sufficient if the court finds the other reps offered not sufficient even though they were not Medicare beneficiaries . Again a reading of the proposed order and the complaint makes that obvious and if there was any ambiguity you could have sought clarification before taking depositions. You chose not to and cannot therefore fault us for your actions.

To "summarize" we stand on all of the class representatives offered. if you simply wish to challenge whether they are Medicare beneficiaries or their nexus to Massachusetts short of deposition you can do so w/o taking a deposition.

From: Lynch, Mark [mailto:mlynch@cov.com]
Sent: Saturday, November 12, 2005 1:04 PM
To: Steve Berman
Subject: RE: Proposed Class Reps

Your designation of individuals as Class 3 representatives is a representation that they have some nexus with Massachusetts that would enable them to bring a claim under Massachusetts law. Our depositions are demonstrating that representation to be false, and you should withdraw any additional such proposed class representatives before we are put to the needless burden of deposing them to establish that they have no nexus with Massachusetts.

With respect to Class1, your response indicates that you are not sufficiently familiar with your own papers. Plaintiffs' "Proposed Consolidated Order Re: Motion for Class Certification" lists some 22 individuals as both Class 1 and Class 3 representatives. See id. at p. 2. Your listing of these individuals as Class 1 representatives in your proposed order is a representation that they are Medicare beneficiaries, and our depositions are demonstrating that representation to be false.

To summarize: if there are individuals who are not Medicare beneficiaries or do not have any nexus with Massachusetts that would enable them to assert a claim under Massachusetts law, you should withdraw them as proposed class representatives promptly.

From: Steve Berman [mailto:Steve@hbsslaw.com]
Sent: Friday, November 11, 2005 2:25 PM
To: Lynch, Mark
Subject: RE: Proposed Class Reps

The complaint identifies the status and residence of each of

the class representatives. You can see from its face that the Class 3 reps you have deposed are not Massachusetts residents. Therefore if you believe this is a defect in their being class reps, you have no reason to depose them and have undertaken to do so with full knowledge of their position before you took the dpes. On your theory there is no need to depose such reps who have not been deposed yet, so I don't see how we are increasing your costs.

The Class 1 reps are Medicare beneficiaries so we don't know what you refer to in your mail.

From: Lynch, Mark [mailto:mlynch@cov.com]
Sent: Thursday, November 10, 2005 3:11 PM
To: Steve Berman
Subject: Proposed Class Reps

Dear Steve:

We have taken the depositions of six of your proposed class representatives -- Ms. Palenica, Mr. Vanderwal, Ms. Vernick, Ms. Leef, Ms. Dison and Ms. Choice -- and none of them are Medicare beneficiaries or have any connection with Massachusetts that would give them standing to assert a claim under Massachusetts law. Because such individuals cannot conceivably be representatives of either Class 1 or Class 3, you are vexatiously wasting defendants' time and money by listing such individuals as potential class representatives and requiring defendants to depose them within the short time allowed by the Court's August 16 order.

The Court's August 16 decision is clear that Class 1 is limited to Medicare beneficiaries who personally made payments for all or part of co-payments that were based on AWP's. The decision is also clear that Class 3 -- third-party payers and consumers that pay for physician-administered drugs outside the Medicare Part B context -- is limited to "a statewide class in Massachusetts." Slip. op. at 4. We understand that you hope to persuade Judge Saris to certify classes of third-party payers and individuals who pay for PADs outside of Medicare Part B under state laws in addition to Massachusetts'. That goal, however, must be the subject of additional motions practice. The August 16 order does not provide for such classes, and purported representatives of such classes are completely irrelevant to the proceedings required by the August 16 order.

We ask you to promptly eliminate from your list of proposed class representatives all individuals who are not Medicare beneficiaries or lack any nexus with Massachusetts that

would give them standing to assert a claim under Massachusetts law as a representative of Class 3. If you fail to do so and require us to conduct additional depositions of such individuals, we will ask the Court to reimburse defendants for the fees and costs incurred in preparing for and conducting such depositions.

Sincerely,

Mark

EXHIBIT 17

FILED UNDER SEAL

EXHIBIT 18

Anna Choice

November 10, 2005

Chicago, IL

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3

4

CERTIFIED COPY

5 IN RE PHARMACEUTICAL INDUSTRY

6 AVERAGE WHOLESALE PRICE MDL No. 1456

7 LITIGATION

8) CIVIL ACTION:

9 THIS DOCUMENT RELATES TO 01-CV-12257-PBS

10 ALL CLASS ACTIONS

11)

12

13 The discovery deposition of

14 ANNA CHOICE, taken in the above-entitled case,

15 before Karyn Chalem, CSR, RPR, on the 10th day of

16 November, 2005, at 1:35 o'clock p.m. at the offices

17 of Hagens, Berman, Sobol & Shapiro, 60 West

18 Randolph Street, Suite 200, Chicago, Illinois,

19 pursuant to agreement of counsel.

20

21 Reported by: Karyn H. Chalem

22 License No.: 084-004167

Henderson Legal Services
(202) 220-4158

Anna Choice

November 10, 2005

Chicago, IL

15

1 insurance that covers your medical expenses?

2 A No, I don't.

3 Q Are you eligible for Medicare?

4 A No, I'm not.

5 Q Are you eligible for Medicaid?

6 A No, I'm not.

7 Q Do you receive Social Security

8 benefits?

9 A No. No, I don't.

10 Q Do you have disability insurance?

11 A Yes, I do.

12 Q Do you receive disability insurance

13 benefits?

14 A Not right now. You know, if I need
15 any, I know I can get it.

16 Q Have you received any disability
17 insurance benefits during the time of your medical
18 treatment in this case?

19 A Yes, I did.

20 Q And during what time period did you
21 receive those benefits?

22 A Okay. I got sick in 2000. So I got

Anna Choice

November 10, 2005

Chicago, IL

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1 A These were on the bills that were
2 sent to me.

3 Q So I understand they were on the
4 bills that were sent to you. What is the basis for
5 your assertion that you paid out-of-pocket amounts
6 for those drugs?

7 MS. FEGAN: Objection, asked and
8 answered, but you can answer again.

9 THE WITNESS: As far as I know, I
10 did, from the bills that were sent to me.

11 BY MR. DOVE:

12 Q And you paid those bills?

13 A Not all of them I've paid. I'm
14 still paying on them.

15 Q Do you know for which drugs you have
16 paid and for which drugs you're still paying on?

17 A No, I really don't.

18 Q Ms. Choice, when were you diagnosed
19 with cancer?

20 A 2000.

21 Q What type of cancer were you
22 diagnosed with?

Anna Choice

November 10, 2005

Chicago, IL

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1 three months for a checkup, and I still have the
2 port in my chest and he cleans that out.

3 Q Just so I understand it, as I
4 understand it, you received -- you were diagnosed
5 with breast cancer, you received this initial round
6 of chemotherapy and radiation in 2000, early 2001,
7 and since that time, you go every three months for
8 a checkup, but you're basically cancer-free, is
9 that correct?

10 A Hopefully, thank God.

11 Q Great.

12 Do you believe that Dr. Thomas is
13 doing his best to help you get well?

14 A Yes, I do.

15 Q Do you believe that Dr. Thomas has
16 your best interests at heart?

17 A I hope he does.

18 Q Do you believe that he does?

19 A Yes, I do.

20 Q Do you believe that Dr. Thomas has
21 conspired with the drug companies to defraud you?

22 MS. FEGAN: Objection, calls for a

Anna Choice

November 10, 2005

Chicago, IL

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1 legal conclusion, but you can answer.

2 THE WITNESS: I really don't know
3 about that. They think everything is a business
4 anyway, so...

5 BY MR. DOVE:

6 Q You say you don't know, but do you
7 think that he has conspired with drug companies to
8 defraud you?

9 MS. FEGAN: Same objection.

10 THE WITNESS: No, I don't think so.

11 BY MR. DOVE:

12 Q Do you believe that Dr. Thomas makes
13 a profit on the drugs that are -- that were
14 administered to you?

15 A I really don't know.

16 Q Do you think that that would be
17 okay, if Dr. Thomas did make a profit on the drugs
18 that he administered to you?

19 A No, I don't think it's okay.

20 Q Did you receive your chemotherapy
21 treatments from Dr. Thomas at an outpatient clinic
22 or in a hospital?

Anna Choice

November 10, 2005

Chicago, IL

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1 Q And based on that representation, do
2 these records reflect your being prescribed
3 Cytoxan?

4 A Yes, it does.

5 Q Do these records reflect your being
6 billed for Cytoxan?

7 A Yes, it does.

8 Q Do these records reflect anyone else
9 being billed for Cytoxan?

10 A Blue Cross/Blue Shield.

11 Q Do these records reflect the charges
12 made for Cytoxan?

13 A Yes, it does.

14 Q Do these records reflect any charges
15 being based on AWP?

16 A I really couldn't tell you that
17 because I don't know.

18 Q Do you recall personally being
19 billed for Cytoxan?

20 A No, I don't remember.

21 Q Do these records reflect your being
22 prescribed Rubex? And I can represent to you that

Anna Choice

November 10, 2005

Chicago, IL

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1 we were not able to find any entries for Rubex, but
2 the reason we're asking is that Rubex was mentioned
3 in your affidavit as a drug that you -- you took.

4 A I really don't remember.

5 Q Ms. Choice, do these records reflect
6 your being prescribed Dexamethasone Sodium? And to
7 help you out here, I can direct your attention to
8 page four.

9 Two lines under the Cyclophosphadide
10 entry, there's an entry for dexameth. Do you see
11 that?

12 A Yes, I do.

13 Q I can represent to you that that's
14 an entry for Dexamethasone Sodium.

15 Do you know the purpose of this
16 medication?

17 A No, I don't.

18 Q Do these records reflect who
19 manufactured the Dexamethasone Sodium?

20 A Not as I know it.

21 Q Do you know who manufactures
22 Dexamethasone Sodium?

Anna Choice

November 10, 2005

Chicago, IL

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1 A No, I don't.

2 Q So is it correct that you have no
3 way of knowing from these records whether the
4 Dexamethasone Sodium you were prescribed was
5 manufactured by a specific company?

6 A No, I don't.

7 Q Do you know whether the charges for
8 the Dexamethasone Sodium was based on AWP?

9 A No, I don't.

10 Q Ms. Choice, do these records reflect
11 your being prescribed Heparin? And again I will
12 direct your attention to this page four. About
13 nine lines down from the dexameth entry, there's an
14 entry that says Heparin. Do you see that?

15 A Yes, I do.

16 Q So in light of that, do these
17 records reflect your being prescribed Heparin?

18 A Yes, it does.

19 Q Do you know the purpose of this
20 medication?

21 A No, I don't.

22 Q Do these records reflect who